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**RESPONSE OF
NOVEMBER INC.
TO THE
FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

November Inc. hereby responds to the Federal Election Commission's ("Commission") Legal and Factual Analysis ("Analysis") and the Original Complaint filed by Howard Walter Herz ("Complaint"). November Inc. respectfully urges the Commission to reject the allegation that November Inc. made prohibited corporate contributions to Heller for Congress and Elisabeth Ballinger, in her official capacity as Treasurer ("the Committee"), and to dismiss this matter in its entirety. As evidenced by the facts in this matter, November Inc. extended credit to the Committee in the ordinary course of its business and, therefore, did not violate 2 U.S.C. § 441b(a).

I. PROCEDURAL BACKGROUND

The Complaint was received by the Commission on October 21, 2008. The Analysis was received by November Inc. on May 23, 2008.

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II. FACTUAL BACKGROUND

A. NOVEMBER INC. AND FOUNDATIONS INC. ARE SEPARATE AND DISTINCT ENTITIES.

Despite the affiliation between November Inc., Autumn Productions, and NI Operations,¹ November Inc. wants to make clear to the Commission that Foundations Inc. (n/k/a In Compliance Inc.) is a separate and distinct entity. November Inc. are not affiliated companies, and neither November Inc. nor any of its principals have an ownership interest in Foundations Inc. Furthermore, November Inc. and Foundations Inc. maintain separate bank accounts and do not commingle funds. Foundations Inc., which provided the treasury services to the Committee during the 2005 – 2006 election cycle, did lease office space from November Inc. between 2004 – 2005. The lease agreement between Foundations Inc. and November Inc., as well as the treasury services that Foundations Inc. provided to the Committee, explain why “the Heller for Congress Committee, Foundations, Inc. [sic], Autumn Productions, and NI Operations all share[d] the following address: PO Box 27972, Las Vegas, NV 89126.” COMPLAINT at 2.

B. THE ANALYSIS OVERSTATES THE IMPACT OF THE COMMITTEE’S DEBT ON NOVEMBER INC.’S FINANCIAL STABILITY.

A central premise for the Analysis’s finding rests on the legitimacy of whether a “corporation with an estimated \$100,000 in annual sales could extend credit in

¹ Autumn Productions and NI Operations are d/b/a’s of November Inc., and they are treated as a single corporate entity under Nevada law. November Inc. chose to create and operate under the d/b/a’s to differentiate the various types of services provided by the company. In 2006, November Inc. primarily provided fundraising services, Autumn Productions primarily provided political consulting and media services, and NI Operations provided rental services to entities that leased office space from the company. For the purposes of this Response, use of the term “November Inc.” includes Autumn Productions and NI Productions, unless otherwise specified.

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excess of \$100,000 for more than two years in the ordinary course of business."

ANALYSIS at 4:18-20. The annual sales figure generated from the Dun and Bradstreet research service report, however, provides a misleading snapshot of November Inc.'s actual sales. By understating November Inc.'s annual sales, the Commission is inevitably forced to overstate the leverage and risk resulting from the Committee's debt. Thus, November Inc. urges the Commission to take into account November Inc.'s annual sales figures from 2004 – 2009:²

2004:	\$1,147,894.49
2005:	\$995,366.81
2006:	\$1,436,725.70
2007:	\$143,127.09
2008:	\$140,086.29
2009:	\$575,000.00 (projected)

Furthermore, the Commission should consider the amount of debt owed by other November Inc. clients, which totaled \$404,044.43 on December 31, 2006. By taking this additional information into account, the Commission should recognize that the extension of credit to, and amount owed by, the Committee were well within November Inc.'s ordinary course of business. Similarly, six of November Inc.'s political clients and four of November Inc.'s nonpolitical clients, including one company that currently owes more than \$125,000.00, have been more than 90 days

² One basic fact explains the significant drop in annual sales figures in 2007 and 2008. In late 2006, the co-owners of November Inc., Mike and Lindsey Slanker, each accepted positions with the National Republican Senatorial Committee and relocated from Las Vegas, Nevada to Washington, D.C. Although November Inc. remained an actively registered corporation with staff, Mike and Lindsey Slanker drastically reduced their day-to-day involvement with November Inc. and did not actively pursue new clients during the 2007 – 2008 election cycle. November Inc. would like to clearly point out, however, that the company maintained its continuity of operations during this time and fully expected the Committee to pay the debt owed, so there was no forgiveness or settlement of the debt under 11 C.F.R. § 116.4. In December 2008, Mike and Lindsey Slanker relocated back to Las Vegas, Nevada and are once again actively pursuing new clients.

past due on their payments since 2004. The breadth and scope of this debt undercuts the Analysis in two ways. First, clients other than the Committee either owe or have owed significant amounts of money to November Inc. Second, the list of clients that either owe or have owed money to November Inc. is not limited to the Committee, or to political clients for that matter.

C. THE COMMITTEE FAILED TO REGULARLY AND PROMPTLY PAY TWELVE COMMERCIAL VENDORS AND POLITICAL CONSULTANTS.

The Complaint states that the Committee has "regularly and promptly paid for [other] services rendered during both the 2006 and 2008 campaign cycles." COMPLAINT at 2. While this statement can be presumed to be partly true, it ignores the fact that the Committee failed to pay twelve commercial vendors and political consultants as their payments became due. This fact is evidenced by Schedule D of the Committee's FEC reports during the time period in question, which list the following "Debts Owed by the Committee": (1) November Inc.; (2) Autumn Productions; (3) NI Productions; (4) Foundations Inc.; (5) Weeks & Co; (6) R&R Partners; (7) Majority Communications; (8) FLS Connect; (9) Kummer Kaempfer Bonner; (10) Joe Catania; (11) Stewart Bybee; and (12) Erika Loveland. The Committee obviously failed to "regularly and promptly pa[y] for [other] services rendered during both the 2006 and 2008 campaign cycles."

D. POLITICAL CONSULTANTS REGULARLY ALLOW DEBTS TO GO UNPAID WITHOUT CHARGING INTEREST AND WITHOUT INSTITUTING LEGAL PROCEEDINGS.

The Complaint also states that it is "well outside the usual and normal practice of the political consulting industry to allow debts owed by private sector clients to go

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unpaid for periods approaching 2 years interest-free and/or without collection or legal action." COMPLAINT at 2. While it may not be the optimal business practice, allowing debts to go unpaid for lengthy periods of time without charging interest and/or pursuing legal recourse is certainly not "well outside the usual and normal practice of the political consulting industry." When determining what is the "usual and normal practice of the political consulting industry," the Commission should consider whether any of the twelve commercial vendors and political consultants listed on Schedule D of the Committee's FEC reports have ever charged the Committee interest for the debts owed or pursued legal recourse against the Committee. November Inc. also urges the Commission to recognize the political reality of working with candidates and political committees: the decision to initiate legal proceedings against a candidate or political committee, or to turn them over to a debt collection agency, is a risky proposition that can severely stymie a company's ability to secure future business.

III. LEGAL ARGUMENT

The issue presented in this case is whether November Inc. made a prohibited contribution in the form of an extension of credit to the Committee. As emphasized in the Analysis, the issue turns on whether the Committee's debt is a credit "extended in the ordinary course of [November Inc.'s] business,"³ and [whether] the terms are substantially similar to extensions of credit to nonpolitical debtors of similar risk and size of the obligation." ANALYSIS at 2:16-18 (citing 11 C.F.R. §§ 100.55, 116.3(b)).

³ November Inc. concedes that the debt qualifies as an "extension of credit" under 11 C.F.R. § 116.1(e) because it did not require full payment until after it rendered services to the Committee.

In assessing whether November Inc. extended credit in the ordinary course of business, the Commission will consider: (1) whether November Inc. followed its established procedures and its past practices in approving the extension of credit; (2) whether November Inc. received prompt payment in full if it previously extended credit to the Committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade. See 11 C.F.R. § 116.3(c). The Commission will also consider whether November Inc. made a commercially reasonable attempt to collect the debt. 11 C.F.R. § 100.55. As shown below, the extension of credit to the Committee falls squarely within the exceptions contemplated in 11 C.F.R. §§ 100.55 and 116.3(b), and thus no prohibited contribution has been made.

A. NOVEMBER INC. FOLLOWED ITS ESTABLISHED PROCEDURES AND PAST PRACTICES WHEN APPROVING THE EXTENSION OF CREDIT TO THE COMMITTEE.

November Inc. routinely extends credit to both political and nonpolitical clients in the ordinary course of its business. Its traditional invoicing policy for both political and nonpolitical clients is to: (1) render the services on behalf of the client; (2) invoice the client for the services provided; and (3) request payment within 30 days from the invoice date. November Inc. utilized an identical invoicing policy for services provided to the Committee. Compare Exhibit "A" (November Inc. - Committee Agreement⁴) with Exhibit "B" (November Inc. - Alabama Credit Union League Agreement). As can be verified by the agreements, November Inc.'s

⁴ November Inc. has been unable to locate a signed agreement between November Inc. and the Committee, but was able to locate an unsigned agreement between the parties.

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agreements between political and nonpolitical clients are similar in all material respects.

B. THE TERMS EXTENDED TO THE COMMITTEE CONFORMED TO THE TERMS EXTENDED TO OTHER NEW CLIENTS.

November Inc. first began providing services to the Committee in 2005, the year in which the Committee filed its initial Statement of Organization with the Commission. Despite being a new client, the terms extended by November Inc. to the Committee were similar in all material respects to the terms extended to new November Inc. clients, which can be verified by Exhibit "B" (November Inc. - Alabama Credit Union League Agreement).

C. THE EXTENSION OF CREDIT CONFORMED TO THE USUAL AND NORMAL PRACTICE IN THE COMMERCIAL VENDOR'S TRADE.

While November Inc. concedes that the amount owed to it is substantially greater than the amounts owed to other individual commercial vendors, two basic explanations can help explain the discrepancy. First, November Inc. provided general political consulting and fundraising services to the Committee, which also happen to be the most expensive commercial vendors hired in any political campaign. Second, lower expenses and debts are obviously satisfied more easily than higher expenses and debts, which explains why the Committee has been able to pay off some of the commercial vendors and political consultants that have been listed on Schedule D of the Committee's FEC reports. It is logical that the Committee incurred a significant amount of expenses for November Inc.'s political consulting and fundraising services,

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and it is similarly logical that the largest expenses are the most challenging debts to pay.

D. NOVEMBER INC. HAS MADE A COMMERCIALY REASONABLE ATTEMPT TO COLLECT THE DEBT.

The Complaint states that it is not the "usual or normal practice for consulting companies to allow debts to go unpaid for two years." ANALYSIS at 1:4-15. This allegation implies that November Inc. did not attempt to collect the debt and/or did not act within its usual course of business to collect the debt. Contemporaneous emails, however, show that November Inc. was attempting to collect the debt from the Committee. See 8/16/2007 email from Mike Slanker to Rebecca, attached as Exhibit "C" (noting the "need to work on Heller later this year for some dough"); 8/14/2007 email from Mike Slanker to Rebecca (noting that November Inc. "was counting on Heller paying us something") and 8/15/2007 email from Mike Slanker to Rebecca, attached as Exhibit "D" (saying that November Inc. is "working on Heller money by year's end"); 8/21/2007 email from Mike Slanker to Rebecca, attached hereto as Exhibit "E" (noting that November Inc. has "asked team Heller for a modest payment this year"); 1/28/2008 email string, attached as Exhibit "F" (discussing the recent \$8,950 payment from the Committee, saying that "[i]t's a start" and that "[i]f [the Committee] wrote us a check this size once a month until the summer of 2010 we [sic] be about paid up"); 3/4/2009 email from Lindsay Slanker to Rebecca, attached as Exhibit "H" (asking if Rebecca "g[o]t a check for Heller debt in February").

Although November Inc. has not initiated legal proceedings or turned the Committee over to a debt collection agency, the Commission must recognize that

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November Inc. has *never* utilized such efforts for the six political and four nonpolitical clients that have been more than 90 days past due on their payments. Similarly, November Inc. has *never* sought interest for debt owed by its clients, some of which have owed in excess of \$100,000.00.

IV. CONCLUSION

November Inc. maintains that it extended credit to the Committee in the ordinary course of its business and, therefore, did not violate 2 U.S.C. § 441b(a). Thus, November Inc. respectfully urges the Commission to reject the allegation that it made prohibited corporate contributions to the Committee, and to dismiss this matter in its entirety.

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